

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GREGORY DAVIS,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:08CV183
(Judge Keeley)

UNITED STATE OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On October 1, 2008, the defendant removed this case from the Circuit Court of Gilmer County and also filed a notice of substitution requesting that the United States of America be substituted for the defendant Eric Feltz. On October 21, 2008, this Court ordered that the caption of this action be amended to reflect that the United States of America is the sole defendant in this matter.

On October 16, 2008, the United States filed a Motion for Summary Judgment (dkt. no. 5). On October 21, 2008, this Court issued a Roseboro notice advising the plaintiff of his right to file a response to the motion. On November 5, 2008, Davis filed his objection to the motion (dkt. no. 14), a "Motion to Dismiss Pursuant to 60(b)(3) Fraud upon the Court" (dkt. no. 15) and a "Motion for a Preliminary Injunction" (dkt. no. 16). On November 17, 2008, this Court referred this matter to United States Magistrate Judge James E. Seibert. On January 8, 2009, Davis filed an "Ex Parte Motion to Dismiss" (dkt. no. 19).

ORDER ADOPTING REPORT AND RECOMMENDATION

On May 11, 2009, Magistrate Judge Seibert issued a Report and Recommendation ("R&R") recommending that the Court **GRANT** the defendant's motion to dismiss (dkt. no. 5), **DENY** Davis' motion to dismiss pursuant to Rule 60(b) (dkt. no. 15), **DENY** Davis' "Motion for a Preliminary Injunction" (dkt. no. 16), **DENY** Davis' "Ex Parte Motion to Dismiss" (dkt. no. 19) and **DISMISS** the case **WITHOUT PREJUDICE**. The Magistrate Judge determined that removal of the case was proper and that Davis had failed to exhaust his administrative remedies both prior to filing suit in state court and also prior to requesting injunctive relief.

The R&R also specifically warned Davis that failure to object to the recommendation would result in the waiver of his appellate rights on this issue. On May 28, 2009, Davis filed a reply to the R&R stating that he concurred "only with the dismissal with out (sic) prejudice". Davis, however, did not object to any specific recommendation in the R&R.¹

Upon consideration of Magistrate Judge's R&R, and noting that Davis does not file any specific objections to any of the recommendations, the Court **ADOPTS** the R&R in its entirety and:

¹ Objections to an R&R must be specific. Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003). Davis's failure to object to the R&R not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. An, 474 U.S. 140, 148-153 (1985); Wells v. Shiner Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

ORDER ADOPTING REPORT AND RECOMMENDATION

1. **GRANTS** the defendant's motion for Summary Judgment (dkt. no. 5);
2. **DENIES** Davis' motion to dismiss pursuant to Rule 60(b) (dkt. no. 15);
3. **DENIES** Davis' "Motion for a Preliminary Injunction" (dkt. no. 16);
4. **DENIES** Davis' "Ex Parte Motion to Dismiss") (dkt. no. 19);
5. **DISMISSES** the case **WITHOUT PREJUDICE**; and
6. **ORDERS** the case stricken from the docket of this Court.

The Court directs the Clerk to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and to transmit a copy to counsel of record.

Dated: June 4, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE